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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 519

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Petitioner,

vs.

JAMES D. COUGHRAN.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

SUPPLEMENTAL BRIEF AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

DISCUSSION OF APPELLEE'S CONTENTION THAT "SPECIFICATIONS 1 AND 2 ARE UNTENABLE FOR THE REASON THAT THE CIRCUIT COURT OF APPEALS DID NOT DISREGARD ANY FINDINGS OF THE TRIAL COURT, NOR DID IT DEPART FROM PRECEDENT IN ANY RESPECT."

Appellee's argument on this point entirely ignores the language contained in the majority opinion as follows:

> "This finding that the car was jointly operated by Helen B. Anthony and the passenger minor is incon-

> sistent with Finding III that Helen B. Anthony operated the car. And to elucidate the truth a review of the testimony is required."

Under this heading appellee cites *O'Connell* v. *N. J. Federal Insurance, etc., Co.*, 201 App. Div. 117, 138 N. E. 744, and *Williams* v. *Nelson*, 228 Mass. 191, in support of his contention that the findings taken jointly or severally support the judgment.

We especially invite the Court's attention to the findings of fact in these two cases relied upon by appellee. It will be observed in both of the cases the court found that the minor at the time of the accident *was not exercising any control over the car.*

In both of those cases the defendant insurance company lost in the lower court by virtue of the special findings of the trial court. In this case the findings were in part:

> [redacted] That so far as the propulsion or driving of the vehicle was concerned, other than the means of direction, all instrumentalities were being physically actuated by the minor with the acquiescence and knowledge of Helen B. Anthony. (R 42)

II:

DISCUSSION OF APPELLEE'S CONTENTION THAT THE MAJORITY OPINION FOLLOWS ESTABLISHED SPECIFIC PRECEDENT AND CONFORMS TO THE UNIVERSAL RULES OF CONSTRUCTION APPLICABLE TO INSURANCE CONTRACTS.

In *Coolidge* v. *Standard Accident*, 114 Cal. App. 716, the policy sued upon excluded liability if the insured car was towing a trailer. The court stated in discussing proximate cause:

> "The defendant's exemption from liability does not depend upon the attached trailer becoming the cause of the accident or even contributing to the casualty. The

very fact that the trailer was being towed relieved the defendant from liability."

For a case in which the findings were similar to the ones in the case at bar see *Sears* v. *Illinois Indemnity Co.*, 121 Cal. App. 211. The court found that at the time of the accident the Buick was being driven by the 15 year old minor and also found that the said automobile was operated by defendant Angrimson who was present in the car and that the said automobile was at said time in the control of and under the management of and being operated by said Gilbert Angrimson.

After an exhaustive review of the authorities the court gave judgment in favor of defendant, holding that the violation of the provision by the minor was a good defense.

See also following authorities:

Setson v. *Sun Ind. Co.*, 264 N. Y. S. 519;
Cullen v. *Travelers Ins. Co.*, 214 Wis. 467;
Hudak v. *Union Ind. Co.*, 143 At. 885;
Roberts v. *Ind. Insurance Co. of North America*, 114 W. Va. 252.

III.

PETITIONER WAS NOT BOUND BY THE JUDGMENT IN THE TORT ACTION AS TO WHO WAS DRIVING OR OPERATING THE ASSURED'S CAR.

The rule is stated in Section 4062, Vol. 6, Blashfield's Cyclopedia of Automobile Law and Practice:

"* * * However a method has been worked out and is now resorted to quite frequently whereby the insurance company may give the insured the benefit of a defense by it without jeopardizing its rights to contest liability. * * *"

where at the time of the initial suit it notifies the insured that it does not waive the benefits of such defense and he accedes to such reservations of rights (citing case).

In none of the cases cited by appellee in support of his contention that petitioner was bound by the judgment in the *tort* action was a reservation of rights taken by the insurance company.

The following California cases recognize and support the rule given by Blashfield:

Hynding v. *Home Insur. Co.*, 214 Cal. 743;
Sears v. *Ill. Indemnity Co.*, 121 Cal. App. 211;
Coolidge v. *Standard Accident Co.*, 714 Cal. App. 716;
McDaniels v. *General Insurance Co.*, 1 Cal. App. (2d) 454.

The appellee in this case cannot recover if the assured could not. His rights are no greater or no less than those of the assured.

Royal Ind. Co. v. *Morris*, 37 F. (2d) 90 (9th Circuit);
Calif. Stats. 1919, page 776.

In the *Lamb case*, 3 Cal. App. (2d) 624, cited by appellee, it will be noted that no non-waiver agreement was taken and that the insurance company refused to defend.

Conclusion.

In conclusion we now respectfully submit that appellee has not met the true issue in this case. Let him answer the question as to whether under the findings of the lower court Helen Anthony was violating Section 76 of the Motor Vehicle Act, Calif. Stat. 1923, page 536, or if the minor child was violating paragraph 58A of Calif. Stat. 1927, page 1427.

Your petitioner respectfully submits that the judgment should be reversed.

Respectfully submitted,

JOSEPH A. SPRAY,
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IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term 1937
No. 519.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, a corporation,

Petitioner,

vs.

JAMES D. COUGHRAN,

Respondent.

Argument and Authorities in Opposition to Petition for Writ of Certiorari.

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